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No. 81-142

In The
Supreme Court of the United States

OCTOBER TERM, 1981

GARY STANKOWSKI
Petitioner

vs.

STATE OF CONNECTICUT
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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REASONS FOR DENYING THE WRIT

1. THE CONNECTICUT SUPREME COURT DID NOT ERR IN FINDING THAT THE JURY CHARGE HEREIN, ALTHOUGH SAME DID CONTAIN THE PHRASE CONDEMNED IN SANDSTROM v. MONTANA, 442 U. S. 510 (1979), DID NOT, WHEN READ AS A WHOLE, IMPERMISSIBLY SHIFT THE BURDEN OF PROOF TO THE PETITIONER OR CONSTITUTE A CONCLUSIVE PRESUMPTION.

In the wake of this Court's decision in Sandstrom v. Montana, 442 U. S. 510 (1979), appellate courts such as the Supreme Court of the State of Connecticut have been left to determine, on a case-by-case basis, whether the jury charges in the respective cases, when read as a whole, constitute either the burden-shifting or conclusive presumption difficulties enumerated in Sandstrom, supra.

In the absence of further explication by this Court of the principles found in Sandstrom, supra, the lower courts have also been left to decide whether that case should be applied in a talismanic fashion, such that any "specific intent" case must be reversed any time the suspect Sandstrom phrase about a person necessarily intending the natural consequences of his actions is found, or, in the alternative, whether other portions of the jury charge which help to modify or explain the effect of the presumption can be weighed, in an effort to determine the overall impact of the charge on the mind of the average juror.

As indicated in the Petitioner's Brief, p. 13, the Supreme Court of Connecticut has taken the latter, more reasonable approach outlined above by proceeding on a case-by-case basis, to evaluate various factors, such as the specific charge of which the defendant was found guilty; the extent to which specific intent was a real issue in each case; and the ameliorative impact of other phraseology in the charge which might provide a different context to the overall impact on the average, reasonable juror.

That approach was taken in the present case and the Supreme Court of Connecticut weighed the various factors and found that the charge, when read as a whole, simply did not compel the jury which heard Petitioner's case to reach any specific conclusion.

Unless the Court wants to act as a reviewing court on this, as well as undoubtedly hundreds of other state and federal court applications of the Sandstrom decision, it is respectfully suggested that certiorari simply be denied in the present case.

If, on the other hand, the Court is desirous of an opportunity to further explicate its own decision in Sandstrom, such as rejecting the "talismanic" approach which defendants across the country have called for, perhaps this case might serve as an appropriate vehicle.

The respondent is confident that, should certiorari be granted in this matter, the well-reasoned and thorough approach taken by the Supreme Court of

Connecticut will prevail. That evaluative procedure, indeed, might serve as a guide to other state and federal appellate courts presently puzzling over the most appropriate manner in which to apply the Sandstrom principle.

II. THE CONNECTICUT SUPREME COURT'S EVIDENTIARY RULING ON THE COMPETENCY OF A SIX-YEAR-OLD BOY TO TESTIFY DOES NOT REPRESENT A FEDERAL QUESTION APPROPRIATE FOR DETERMINATION BY THIS COURT ON CERTIORARI.

While the Respondent will not in any way dispute the general line of cases, such as United States v. Nixon, 418 U. S. 683, 41 L.Ed. 2d 1039, 94 S.Ct. 3090 (1974), which speak of the "compulsory process" guarantees of the Constitution and the right of a defendant to present his case as he so desires, the fact remains that no decision has been cited which eliminates the traditionally discretionary responsibility of a trial court to test the competency of a questionable witness and to deny the opportunity to testify to those who simply fail to meet the minimal standards established to qualify an individual as a competent witness.

In a situation such as this, it should not be forgotten that it is the trial court alone which had the opportunity of hearing the testimony of the prospective child-witness outside the presence of the jury; was able to observe his demeanor on the stand and, possibly, to observe distractions

or hesitancies which a transcript cannot reveal. In recognition of this advantage, trial courts have traditionally been granted great deference in rendering their discretionary decisions on the competency issue.

In the present case, the Petitioner is unable to cite any reason why this basic evidentiary ruling in a state court trial should be catapulted into a federal question of Constitutional dimension.

III. THE CONNECTICUT SUPREME COURT DID NOT ERR IN REFUSING TO EXTEND THE PRINCIPLE OF MIRANDA v. ARIZONA, 384 U. S. 436 (1966), BY PLACING AN AFFIRMATIVE DUTY ON POLICE TO WARN AN INCOHERENT AND BABBLING SUSPECT THAT HIS SPONTANEOUS UTTERANCES MIGHT BE USED AGAINST HIM.

Since the Petitioner was subsequently to take the stand and testify that the shooting of Valerie Vickers was done by him accidentally, it is difficult to divine precisely what prejudice was done to his cause by the introduction of various statements, the basic thrust of which was that the shooting had been an accident for which the Petitioner was quite sorry.

The even simpler answer to the Petitioner's claim is that although he was in custody at the time he made his statements or "babblings," these were not made in response to any interrogation conducted by the police but were, rather, the rambling,

voluntary and unsolicited comments of the Petitioner. In short, there was no duty on the part of the police to stop the Petitioner from talking in such a rambling, somewhat incoherent, fashion.

This Court's decision of Rhode Island v. Innis, 100 S.Ct. 1682 (1980) did much to dispel the notion that what occurred here was "interrogation" of the Petitioner such that the Miranda warnings were required. In Innis, supra, this Court ruled that "interrogation" within the meaning of Miranda occurs when police subject a person in custody either to express questioning or to words and actions that the police should know are reasonably likely to elicit an incriminating response, given their knowledge of the suspect and any unusual susceptibility on his part to particular forms of persuasion. The Innis case involved a conversation between two officers in the front seat of a police cruiser in which a defendant was being transported, which conversation resulted in -- to their surprise -- an inculpatory, yet voluntary, response by the defendant.

It is difficult to believe that this Court, in light of the Rhode Island v. Innis, supra, and the general trend of this, and many other, Courts around the country to limit rather than expand the impact of the Miranda decision, would seize upon this third issue in the Petition as a chance to travel in the opposite, and retrogressive, direction.

CONCLUSION

For the reasons set forth in this brief, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATION

I, Ernest J. Diette, Jr., Attorney for Respondent, hereby certify that three (3) copies of the foregoing Brief in Opposition to petitioner's Petition for a Writ of Certiorari were mailed via U.S. Mail, postage prepaid, this 22nd day of October, 1981, to the following attorneys of record:

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